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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,532	12/20/2005	Heino Messerschmidt	20037.1001USWO	8331

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EXAMINER

SCHILLER, ALINA

ART UNIT	PAPER NUMBER
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3671

MAIL DATE	DELIVERY MODE
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06/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,532	Applicant(s) MESSERSCHIMIDT ET AL.	
	Examiner ALINA SCHILLER	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-9 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-9 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 as presented as dependent upon new claim 21 is indefinite since it is unclear how this claim relates to the original disclosure and what is now defined as the "second locking means" in claim 21, it would appear that claim 5 as it depends from claim 21 does not have support in the originally filed specification has not been examined on the merits,.

Regarding claims 6 and 7, there is no antecedent basis for "fixation devices" since only one such device is set forth in claim 21. Claims 6 and 7 have been examined as if the phrase "fixation devices are each" has been replaced by the phrase --fixation device is--.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

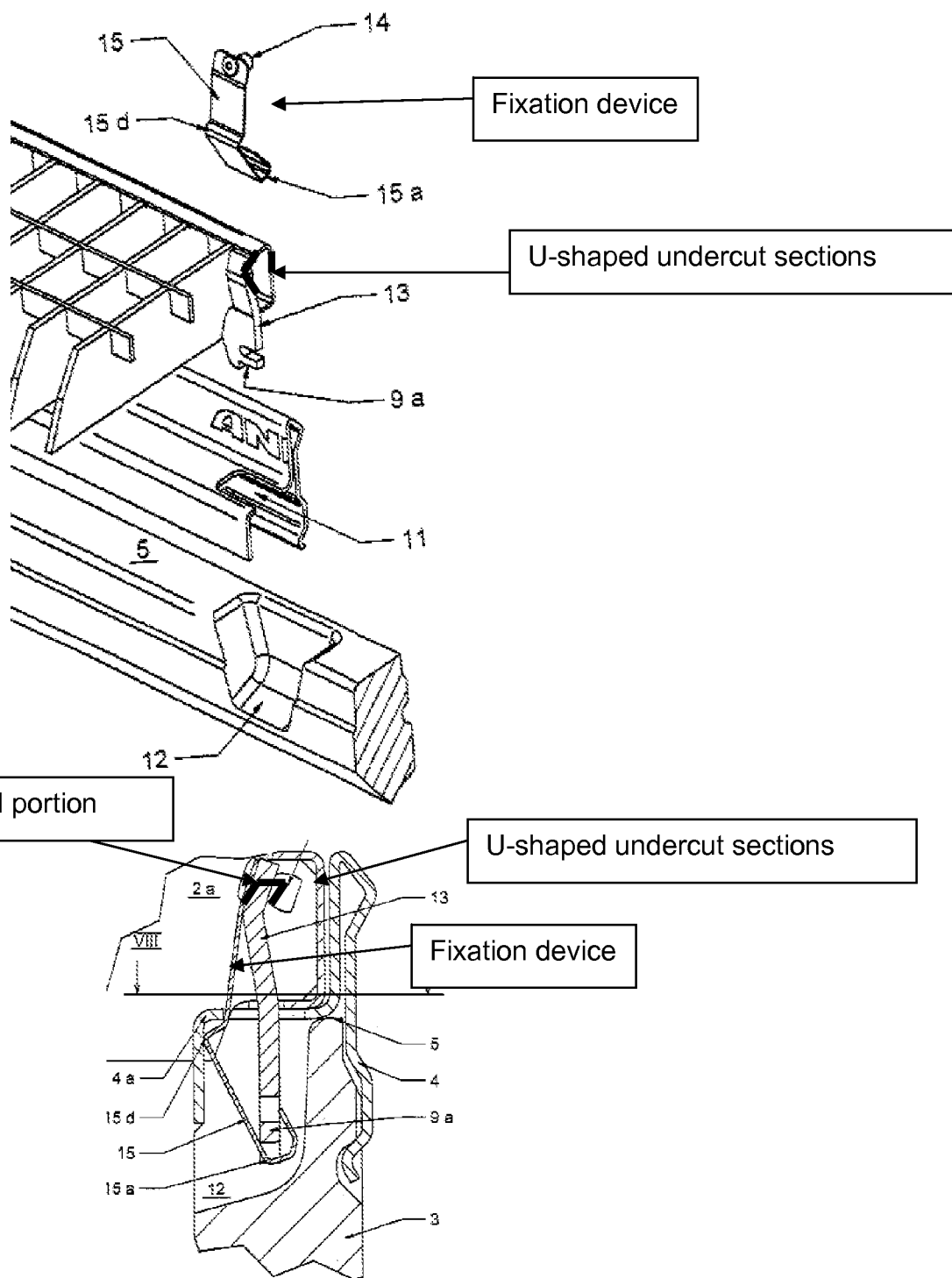
Art Unit: 3671

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 21, 2, 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Broermann et al DE 20200509.

Regarding claim 20, Broermann discloses a surface water drainage system (as seen in Figs. 5 and 6), comprising:

- a structure (3) installed in the ground and having an upper edge with a frame (4) thereon, said frame including a notch (11);
- a cover (2a) having edges forming undercut sections with U-shaped profiles (as seen in the modified pictures below taken from Figs. 5 and 6); and
- a fixation device having a U-shaped portion (as seen in the second modified picture below) and a portion with a nose (15d), said U-shaped portion fitting within one of said undercut sections to lock said fixation device to said cover, said nose fitting within said notch to lock said cover to said structure (as seen in the modified pictures below and Figs. 5 and 6).



Regarding claim 21, Broermann discloses a surface water drainage system (Figs. 5 and 6), comprising:
a structure (3) installed in the ground and having an upper edge with a frame (4) thereon;
a cover (2a) having edges forming undercut sections with U-shaped profiles (as seen in the modified pictures above); and
a fixation device (as seen in the pictures above) with first means (15d) for locking said fixation device on said cover to said frame on said structure and with second means (14) for locking said fixation device to one of said undercut sections of said cover.

Regarding claim 2, Broermann discloses that said second locking means detachably fixes said fixation device to the cover (as seen in Figs. 5 and 6).

Regarding claim 3, Broermann discloses that said second locking means fixes said fixation device to the cover without use of tools (as seen in Figs. 5 and 6).

Regarding claim 6 as best understood, Broermann discloses that the fixation device is constructed as a spring from a bent strip of material (spring leaf, Abstract, Figs. 5 and 6).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broermann et al DE 20200509 in view of Rathmann et al 2004/0126187.

Regarding claim 4, Broermann discloses an apparatus as previously set forth, wherein said second locking means comprise flexible elements (leaf spring, Abstract), but fails to disclose that the flexible elements are adapted such that less force is required to change a shape of the elements during mounting to the cover than during detachment from the cover. Rathmann teaches that the concept of flexible fixation elements adapted such that less force is required to change a shape of the elements during mounting to the cover than during detachment from the cover is well known in the art, so that the cover is securely attached to the channel body, and is taken away only when repair or cleaning operations are necessary, the cover being reliably locked in place, on one hand, while on the other hand, being adequately secured against being unintentionally lifted off ([0016], [0014], claim 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Broermann to have the flexible elements adapted such that less force is required to change a shape of the elements during mounting to the cover than during detachment from the cover, similar to that of Rathmann, so that the cover is securely attached to the channel body, and is taken away only when repair or cleaning operations are necessary, the cover being reliably locked in place, on one hand, while on the other hand, being adequately secured against being unintentionally lifted off, as taught by Rathmann.

Regarding claim 9, Rathmann discloses that the second locking means, which are constructed as springs can be made of plastic ([0019]), and since the second locking means can be elastically deformed ([0014], line 5-7), the second locking means inherently comprises elastomer bodies.

Regarding claim 19, Rathmann discloses that the cover comprises a cast metal grating ([0020]).

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broermann et al DE 20200509.

Regarding claim 7 as best understood, Broermann discloses an apparatus as previously set forth. Broermann also discloses a second embodiment (as seen in Fig. 1 and 2) of the apparatus, wherein the fixation device (10) is fixed on the cover by means of a tab (10b) that has been bent outward from the strip of material (Figs. 1 and 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Broermann from the first embodiment to have the fixation device fixed within the undercut sections of the cover by means of a tab that has been bent outward from the strip of material, as taught by the second embodiment of Broermann, as an alternate structure for a fixation device well known in the art.

Regarding claim 8 as best understood, Broermann discloses that the cover in the region of each of the undercut sections defines an aperture to engage the tab (as seen Fig. 5).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALINA SCHILLER whose telephone number is (571)270-3088. The examiner can normally be reached on Mon-Fri, 7:30AM-4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/
Supervisory Patent Examiner
Art Unit 3671

AS
06/20/2008